

**MF 07-3**

**Tax Type: Motor Fuel Use Tax**

**Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**v.**

**JOHN DOE/DOE CLASSIC CARS, INC.**

**Taxpayer**

**Docket # 06-ST-0000**

**Acct # DP-00000**

**NTL # 00-000000 0**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Chester C. Fuller, Attorney at Law, for JOHN DOE/DOE Classic Cars, Inc.

Synopsis:

The Department of Revenue ("Department") issued a Notice of Penalty for Dyed Diesel Fuel Violation ("Notice") to JOHN DOE/DOE Classic Cars, Inc. ("taxpayer"). The Notice alleged that the taxpayer operated a licensed motor vehicle with dyed diesel fuel in its tank in violation of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*). The taxpayer timely protested the Notice. A hearing was held during which the taxpayer stated that he did not put the dyed fuel in the tank. He also argued that nothing in the

record connects the sample that was taken to the taxpayer's truck, and the amount that was in there was not in violation of the statute. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On November 4, 2005, the taxpayer was operating a 2005 Ford pickup truck, license plate number 000000 0, on Interstate 57. An agent for the Department had stopped the vehicle and inspected the fuel in its tank. (Dept. Ex. #2)
2. The test result of the sample taken from the tank indicated the presence of dyed diesel fuel with a dye concentration of 3.9 parts per million. (Dept. Ex. #2)
3. On December 9, 2005, the Department issued a Notice to the taxpayer showing a penalty due of \$2,500 for being the operator of a licensed motor vehicle that had dyed diesel fuel in its tank on November 4, 2005. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Paragraph 15 of section 15 of the Act provides in part as follows:

“15. If a motor vehicle required to be registered for highway purposes is found to have dyed diesel fuel within the ordinary fuel tanks attached to the motor vehicle \* \* \*, the operator shall pay the following penalty:

First occurrence.....	\$2,500
Second and each occurrence thereafter.....	\$5,000

(35 ILCS 505/15). The taxpayer stated that he did not put the dyed diesel fuel in the truck. He also contends that nothing in the Department's documents connects the sample that was taken to the taxpayer's truck. In addition, the taxpayer claims that nothing in the Department's documents indicates that 3.9 parts per million is over the legal limit. The

taxpayer, therefore, believes that the Department has not met its burden of proof in this case.

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the penalty is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978).

In the present case, the Department's *prima facie* case was established when the Department's certified copy of the Notice was admitted into evidence. Once the Notice was admitted into evidence, the Department's position is legally presumed to be correct. In response, the taxpayer did not present any evidence indicating that dyed diesel fuel was not in the tank.

The sample of the fuel that was taken from the tank was tested in the presence of the taxpayer, and the test results showed that it was taken "From 146103 D," which is the license plate number for the truck. (Dept. Ex. #2) In addition, subsection (b) of the Department's regulation concerning penalties for dyed diesel fuel violations states that a penalty of \$2,500 shall be imposed if a licensed motor vehicle is found to have dyed diesel fuel within the ordinary fuel tank. Subsection (g) of the same regulation provides as follows:

The penalties imposed by subsections (b) and (e) of this Section will be imposed only when the special fuel contains the dye Solvent Red 164 in

quantities greater than .1 part per million. 86 Ill. Admin. Code §500.298(g).

The dye concentration of the fuel in the taxpayer's tank was 3.9 parts per million, which is clearly greater than the amount required to impose the penalty.

Recommendation:

For the foregoing reasons, it is recommended that the penalty be upheld.

Linda Olivero  
Administrative Law Judge

Enter: January 22, 2007